

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

TERESA FLORES §
Plaintiff, §
§
v. §
§
LAKEVIEW LOAN SERVICING, LLC §
Defendant. §
§

Civil Action No. 3:19-cv-141

NOTICE OF REMOVAL

Defendant Lakeview Loan Servicing, LLC ("Lakeview" or "Defendant") files this Notice of Removal of this action from County Court at Law 6, El Paso County, Texas to the United States District Court for the Western District of Texas, El Paso Division, the District and Division encompassing the place where the state court is located. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441 and 1446. In support hereof, Defendant will show:

A. Introduction

1. On April 29, 2019, Plaintiff, Teresa Flores, ("Plaintiff") filed her Plaintiff's Original Petition and Application for Temporary Restraining Order & Application for Temporary Injunction ("Petition") in the County Court at Law 6, El Paso County, Texas, styled *Teresa Flores v. Lakeview Loan Servicing, LLC*, bearing Cause Number 2019DCV1581.

2. According to the court's docket sheet, Defendant was served with citation on May 6, 2019. Thus, Defendant timely files this notice of removal within the 30-day time dictated by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

3. Venue is proper in this Court pursuant to 28 U.S.C. §1446 because the District Court for the Western District of Texas, El Paso Division, is the district and division within which this lawsuit is pending.

4. Pursuant to 28 U.S.C. §1446(a), attached hereto as **Exhibit A** and incorporated by reference is a true and correct copy of the entire file of record with the County Court at Law 6 of El Paso County, Texas, including all process, pleadings, and orders served.

5. Pursuant to 28 U.S.C. §1446(d), this Notice of Removal will be filed with the County Court at Law 6 of El Paso County, Texas, and a copy of this Notice of Removal will also be served on Plaintiff. Defendant has filed contemporaneously with this Notice a civil cover sheet, a supplemental civil cover sheet and separately signed certificate of interested persons and disclosure statement that complies with FED. R. CIV. P. 7.1.

B. Basis for Removal

6. Removal in this case is proper because this Court has diversity jurisdiction under 28 U.S.C. § 1332(a). Where there is complete diversity among parties and the amount in controversy exceeds \$75,000, an action may be removed to federal court.

I. Diversity of Citizenship

7. Plaintiff is a resident of Texas.¹

8. Defendant Lakeview Loan Servicing, LLC is a Delaware limited liability company whose sole member is Bayview MSR Opportunity Master Fund, LP, a Delaware limited partnership.

II. Amount in Controversy

9. Plaintiff seeks monetary relief of over \$100,000 along with a request for treble damages with respect to its right, title and interest in the Property. Based on the amount of

¹ See Petition, at P.1.

damages plead by the Plaintiff, the preponderance of the evidence demonstrates that the amount in controversy meets and exceeds the federal jurisdictional minimum of \$75,000.²

10. The Petition seeks injunctive relief preventing Defendant from seeking foreclosure of the property alleging breach of contract for failure to provide notice of default and statute of limitations.³ “In actions seeking declaratory relief or injunction relief the amount in controversy is measured by the value of the object of the litigation.” *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983). Put another way, “[t]he amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.” *Id.* The court makes the amount in controversy determination from the perspective of the plaintiff; the proper measure is the benefit or value to the plaintiff, not the cost to the defendant. *Webb v. Investacorp, Inc.*, 89 F.3d 252, 257 n.1 (5th Cir. 1996). Put another way, “[t]he amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1252-1253 (5th Cir. 1998). In addition, when the validity of a contract or a right to property is called into question in its entirety, the value of the property controls the amount in controversy. *Nationstar Mortgage, LLC v. Knox*, No. 08-60887, 351 F. App. 844, 848 (5th Cir. Aug. 25, 2009) (quoting *Waller v. Prof'l Ins. Corp.*, 296 F.2d 545, 547-48 (5th Cir. 1961)).

11. Moreover, as Plaintiff seeks injunctive relief to bar any foreclosure proceedings or any transfer of an interest in real property,⁴ the property is the object of the present litigation. *Farkas v. GMAC Mortgage, L.L.C.*, 737 F.3d 338 (C.A.5 (Tex.)). (“The purpose of the injunctive and declaratory relief, to stop the foreclosure sale of the properties by GMAC and Deutsche

² *Id.* at P. 1 and 6.

³ *Id.* at P. 7-8.

⁴ *Id.*

Bank, establishes the properties as the object of the present litigation.”) “In actions enjoining a lender from transferring property and preserving an individual’s ownership interest, it is the property itself that is the object of the litigation; the value of that property represents the amount in controversy.” *Id.* at *5 (citing *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th Cir. 1973)).

11. According to the records of El Paso County Appraisal District, the property at issue has an approximate value of \$104,322.00, well above the \$75,000.00 limit for removal. A true and correct copy of the Property Search Results from the El Paso County Appraisal District is attached hereto as **Exhibit B** and is incorporated herein, and the Court may take judicial notice of the appraised value of the Property from the El Paso County Central Appraisal District’s public website at <http://www.epcad.org> by searching using the Property address or Property Account 398485. *See* FED. R. EVID. 201; *Kew v. Bank of Am.*, N.A., No. H-11-2824, 2012 WL 1414978, at 3 n.4 (S.D. Tex. Apr. 23, 2012) (taking judicial notice of appraised value of property published on Harris County Appraisal District’s website to satisfy amount in controversy requirement in removed mortgage foreclosure litigation). Accordingly, the amount in controversy meets and exceeds the federal jurisdictional minimum of \$75,000.00.

C. Conclusion

12. Defendant removes this action from the County Court at Law 6 of El Paso County, Texas, to the United States District Court for the Western District of Texas, El Paso Division, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

**BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, L.L.P.**

/s/ Crystal Gee Gibson

Crystal G. Roach
State Bar No. 24027322
4004 Beltline Rd., Ste. 100
Addison, Texas 75001
(972) 340-7901
(972) 341-0734 (Facsimile)
CrystalR@bdfgroup.com
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a copy of *Notice of Removal* was served by certified U.S. Mail, return receipt requested, and regular U.S. Mail to the parties below on May 23, 2019.

Via E-service: mjzimp@mjzlaw-ep.com

The Law Offices of Michael J. Zimprich PLLC
Michael J. Zimprich
7001 Westwind Drive, Suite 205
El Paso, Texas 79912
Attorney for Plaintiff

/s/ Crystal Gee Gibson

Crystal Gee Gibson

LIST OF DOCUMENTS ATTACHED

- A. Docket sheet from Case No. 2019DCV1581, Civil Case Information Sheet and Plaintiff's Original Petition filed April 29, 2019, all executed processes in the case, if any, all answers, if any, all orders, if any;
- B. Printout from El Paso County Central Appraisal District;
- C. List of All Counsel of Record;
- D. Notice of Filing of Notice of Removal to Federal Court filed in the County Court at Law 6 of El Paso County, Texas; and
- E. Disclosure Statement and Certificate of Interested Parties.
- F. Civil Cover Sheet
- G. Supplemental Civil Cover Sheet